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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,094	09/29/2003	Laurence J. Cull	P03231	2170
23702	7590	11/01/2005	EXAMINER	
Bausch & Lomb Incorporated One Bausch & Lomb Place Rochester, NY 14604-2701			DEAK, LESLIE R	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/674,094

Applicant(s)

CULL ET AL.

Examiner

Leslie R. Deak

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/29/03, 3/21/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 1-2 are objected to because of the following informalities: the claims contain grammatical errors that make it difficult to define the exact boundaries of the claim (see claim 1, line 6 "collection bag is structured..." and claim 2, line 2 "such that so adhesive..."). Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,976,708 to Oshiyama.

Oshiyama discloses in the specification and figures the device substantially as claimed by applicant. Specifically, Oshiyama discloses a connector for a collection bag in a blood collection apparatus. Oshiyama discloses a blood casing or bag 11 with tubing that connects the bag from fluid source to the bag. The tubing connects to bag 11 via blood inlet port 15 with apertures or notches 16 formed in the cylindrical wall of the port 15 such that the apertures or notches are formed in opposing sides of the port or fitment (see FIG 1, column 4, lines 33-55, column 5, lines 1-20).

Oshiyama does not disclose that the connector is attached to a pumping apparatus. However, applicant does not claim that the connector is attached, only that it

is structured in a way that allows it to be attached to a pumping apparatus. Oshiyama discloses a tube-engaging roller pump downstream of the reservoir or bag 11 (see FIG 14). The tube connected to fitment 15 is capable of and configured to engage with and attach to the fluid circuit shown in FIG 14, which includes the pump.

Oshiyama discloses that the casing or bag 11 is heat sealed around the peripheral edges and that the inlet conduit 15 is integrally sealed between the sheets of the casing (see column 4, lines 50-55, column 5, lines 1-2).

Oshiyama further illustrates that the inlet port or fitment is provided with a sealing area (not labeled) in the form of a protruding piece on the right side of casing 11 in FIG 13. The unlabeled protruding piece holds tubes 25, 15 and provides an illustrated ring-like surface to seal the port or fitment 15 to the casing or bag 11.

With regard to applicant's limitations drawn to the function of the notch and operation of the aspiration bag, such limitations are held to be statements of the intended use of the device. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. See MPEP 2114.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

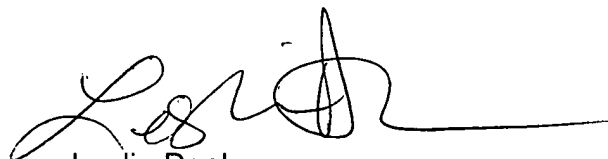
- a. US 4,904,168 Cavoto et al
 - i. Cassette assembly with aspiration pump and collection bag

- b. US 6,723,110 Timm et al
 - ii. Suction catheter with notched tip
- c. US 6,358,232 Hand et al
 - iii. Suction canister with notched-tip inlet tube

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie R. Deak whose telephone number is 571-272-4943. The examiner can normally be reached on M-F 7:30-5:00, every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Leslie Deak
Patent Examiner
Art Unit 3761
28 October 2005